

**ZONING BOARD OF APPEALS  
MEETING MINUTES  
APRIL 18, 2007  
COUNCIL CHAMBERS  
7:00 P.M.**

**I. CALL TO ORDER**

The meeting was called to order at 7:01 p.m.

**II. ROLL CALL**

**Present:** H. Vick, G. Udoji, J. Bailey, J. Tillman, R. Andrews

**Absent:** None

**Staff:** N. Voght, Planner II, N. Schuette, Exec.Secy.

**III. APPROVAL OF MINUTES – March 14, 2007**

Commissioner Bailey moved to approve the minutes of March 14, 2007 (Support: H. Vick) and the motion carried unanimously.

**IV. OLD BUSINESS**

None

**V. NEW BUSINESS**

1. 324 Garland

N. Voght, City Planner, presented his staff report stating that this is a variance request for a single family home in the R-1 district. The request is to add a 10' x 24' addition on the south side of the existing home with also a 6' x 10' deck. The resulting side yard setback to the south would be 2.9' where the R-1 zoning requires a minimum of 5'. In addition, in the R-1, both side yards added together require a total minimum of 14'. In this case, a total of 13.9' is proposed.

An aerial photo of the lot was included in the zoning packet showing a typical 1940 style home, which tend to be smaller. It has a detached garage to the east. We have had a number of variance applications in the past requesting additions to these types of homes. The typical setback constraints that exist with these homes makes it difficult to do additions toward the rear, and the side yards tend to have some room for expansion. In this case, there is approximately 8' that could be used for an expansion but the applicant is asking for 10'.

Voght reviewed the standards adding that more information was required from the applicant on what practical difficulties would exist in constructing an 8' wide addition versus the 10' width proposed. The applicant has indicated some medical problems which require the washer/dryer be located on the ground floor instead of in the basement as currently placed.

Staff recommended that a public hearing be held to receive any neighborhood feedback and review of additional information.

Voght stated that a letter had been received from one neighbor dated April 9<sup>th</sup> in support of this addition.

Commissioner Bailey moved to open the public portion of hearing (Support: J. Tillman) and the motion carried unanimously.

**Rick Barney**, stated that he is the contractor for this project. They have decided to change the expansion to 9'8" instead of 10' which would keep them under the 14' total required and eliminating the need for a variance. They will still be 3'3" from the property line on the south side, which would require a variance of 1'7".

Voght asked if windows would be installed to which the response was that windows were not planned because the owner wished to be sensitive to the privacy of the neighbors. Voght added that is his opinion that from an architectural point of view, windows would be an added enhancement to the appearance of the home.

**Jill Peacock, 322 Garland** – stated her house is adjacent to the applicant. She is supportive of this project.

**Pam Hamblin, North Street** – supports the request. She added that as people age, there will be more interest in moving laundry facilities to the ground floor, thereby having a need for expansion.

**Carole Clare** – owner of the home stated that due to medical reasons, she is unable to go down to the basement, thereby creating a need for expansion of the kitchen to accommodate the washer/dryer.

Commissioner Tillman moved to close the public portion of the hearing (Support: J. Bailey) and the motion carried unanimously.

N. Voght mentioned the lack of windows on the south side of the addition, and asked the applicant why none were proposed. C. Clare responded that she wanted to afford her neighbor privacy, but was not opposed to having windows. Voght suggested that if the neighbor weren't opposed, it may be preferable to install windows for the sake of design. Without windows the new south-facing wall would be large and blank without any transparency. Some board members agreed, while others stated it should be left to the applicant's discretion.

After further discussion, Commissioner Bailey moved to grant the variance to change the setback from 5' to 3'3" with the following findings:

- (a) Literal enforcement of this ordinance will cause undue hardship because of special conditions and size of the property, which is unique to the property.
- (b) Variance is necessary for the preservation and enjoyment of the property, partly due to health condition and other similar variances have been granted in the past.
- (c) This hardship is not created by the current owner.
- (d) Granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood.
- (e) Allowance of the variance will result in substantial justice being done.
- (f) This is the minimum variance as indicated by the contractor and petitioner. Reducing the width of the new addition would eliminate the utilitarian value of the addition.

The motion was supported by Commissioner Tillman. A roll call vote was taken with a vote of 4:1 in favor. Commissioner Tillman was opposed since windows were not included.

## 2. 419 E. Michigan Avenue

Staff report was presented by N. Voght, City Planner, who stated that this is a request for four variances for a proposed Walgreen's Pharmacy on the northwest corner of Prospect and E. Michigan Avenue. The applicant is asking for a few variances related to redevelopment of this site. It is a 1.59 acre site which has been assembled together involving a number of properties as well as an alley possibly being vacated. A rezoning has also been completed. Last month, the Planning Commission reviewed this site plan and found it is a complicated site due to the topography.

The Zoning Board will be reviewing four variances:

- a. Two parking lot islands which have light poles – our ordinance requires a minimum of 150 sq.ft.
- b. Surrounding greenbelt – our Entry Overlay requires a 10' landscape greenbelt around the entire perimeter of the site.
- c. Stacked vehicle spaces for the drive-through – only room for three spaces, our ordinance requires four.
- d. Site lighting – our ordinance requires lighting to be down-directed, shielded with cut-off fixtures so that the source of the illumination is not visible from surrounding properties.

Voght continued by stating that the characteristics of the site and topography, drives the location of the building toward the rear. Staff feels that the applicant has made a great effort in complying with the first three variance requests and is generally supportive of them. However, staff feels that the lighting is a separate issue since it does not relate to the same hardships. We are not supportive of that variance since it does not meet the standards. There is nothing on the site that is driving the need for the up-lighting. There is a clear alternative to providing down lighting on the wall and signage.

Commission members had some questions on the topography, drive-through and ingress/egress to which Voght responded. There was also a question on the down lighting and the reasoning on why staff has concerns. Voght responded that there is a tendency with glare on surrounding properties as well as up-directed lighting contributing to excessive light levels in night skies, which interferes with astronomical observation and enjoyment. He also stated that excessive light trespass is detrimental to the public welfare.

Commissioner Bailey moved to open the public portion of the hearing (Support: J. Tillman) and the motion carried unanimously.

**Dave Prueter, Agree Realty** – is the developer for Walgreen's. He stated that the use of the drive-through would strictly be for prescriptions and is minimal – average of 6/hr. He referred to the issue of the 10 ft various for landscaping on the northwest corner of the property adding that there is a railroad with a significant drop-off which is approximately a 15-20 ft elevation change. They add to expand the drive so that trucks could get around the corner. He also added that there would be one large truck delivery per week.

Regarding the lighting, he indicated that while it is not a hardship, he pointed out a couple of facts. The lighting would be located on the bottom of the awning shining on an angle upward only illuminating the wall. This would be only used on the wall facing Michigan Avenue. The bulb inside the light fixture is only a 50 watt bulb. He does not feel that spillover would be applicable in this situation. The re-design is not practical since it would affect changing the whole electrical of the store, of which they are building 450/yr.

Commissioner Bailey asked if other cities have had problems with these lights and Mr. Prueter responded in the negative. Chairperson Vick asked if the store would be open 24 hrs to which Mr. Prueter responded that this is not planned. She also confirmed that it was the view of the applicant that the down-lighting would be a problem to which Mr. Prueter responded that if the lighting variance was denied, they would not do the lighting. The only lighting would be the sign on the wall. He reiterated that only 50 watt bulbs would be used. Commissioner Tillman confirmed the location of the lighting and Mr. Prueter responded that the lighting would be mounted on the base of the canopy shining on an angle upward on to the sidewall.

Commissioner Udoji moved to close the public portion of the hearing (Support: J. Bailey) and the motion carried unanimously.

After further discussion by commissioners on all the requested variances, Commissioner Bailey moved to approve a variance from Section 122-558 (1) of the Zoning Ordinance to allow a reduced greenbelt width of four (4) ft. along the west property line, as shown on the plan with revision date 4-2-07 based on the following findings:

#### **Variance #1**

1. The subject site has exceptional topographic relief from the northeast corner to the southwest corner. Internal circulation for the site requires certain maneuvering aisle widths around the building and site. A minimum number of off-street parking is required. All of these factors present practical difficulties with providing the required greenbelt around the entire perimeter of the property.
2. A special privilege will not be conferred to the applicant by not providing the greenbelt along the west property line, because the greenbelt is substantially provided around the entire site.
3. The practical difficulties related to site topographic conditions, access, circulation, and layout did not result from actions of the applicant.
4. Granting the variance to allow a reduced greenbelt along the west property line will not be injurious to surrounding properties or the public welfare as the uses directly adjacent are industrial and the elevation difference for these uses is significant.
5. Substantial justice will be done by granting the variance, in balancing the public benefits intended to be secured by the Zoning Ordinance versus the hardships that would be endured by the applicant by denying the variance.
6. The variance is the minimum required to make reasonable use of the property, considering that the required greenbelt will be substantially provided.

The motion was supported by Commissioner Andrews and carried unanimously.

## **Variance #2**

Commissioner Tillman moved to approve a variance to allow three (3) stacked vehicle spaces, where section 122-838 requires a minimum of four (4) based on the following findings:

1. The subject site has exceptional topographic relief from the northeast corner to the southwest corner. Access points to the site and internal circulation within the site has limited the available space for vehicle stacking. In addition, a minimum number of off-street parking is required. All of these factors present practical difficulties with providing the minimum required number of drive-through stacked spaces.
2. A special privilege will not be conferred to the applicant as site conditions and access significantly limit flexibility in site design. In addition, expected volume of drive-through pharmacy prescription pick-up will be easily accommodated by the three stacking spaces provided.
3. The practical difficulties related to site topographic conditions, access, circulation, and layout did not result from actions of the applicant.
4. Granting the variance to allow one fewer stacked drive-through space will not be injurious to surrounding properties or the public welfare.
5. Substantial justice will be done by granting the variance, in balancing the public benefits intended to be secured by the Zoning Ordinance versus the hardships that would be endured by the applicant by denying the variance.
6. The variance is the minimum required to make reasonable use of the property, considering the site constraints.

The motion was supported by Commissioner Bailey and carried unanimously.

## **Variance #3**

Commissioner Andrews moved to approve a variance to allow two (2) landscaped parking lot islands to be 136 s.f. rather than the minimum 150 s.f. required by 122-558 c. (ii) of the Entryway Overlay district, based on the following findings:

1. The subject site has exceptional topographic relief from the northeast corner to the southwest corner. Access points to the site and internal circulation within the site has limited the available space for vehicle parking and maneuvering. In addition, a minimum number of off-street parking is required and the layout of the parking lot required pull-through style stalls along one row. All of these factors present practical difficulties with complying with minimum interior landscape islands area.

2. A special privilege will not be conferred to the applicant as the proposed size of 136 s.f. is substantially compliant with the minimum 150 s.f. required.
3. The practical difficulties related to site topographic conditions, access, circulation, and layout did not result from actions of the applicant.
4. Granting the variance to allow two (2) slightly reduced landscaped islands will not be injurious to surrounding properties or the public welfare.
5. Substantial justice will be done by granting the variance, in balancing the public benefits intended to be secured by the Zoning Ordinance versus the hardships that would be endured by the applicant by denying the variance.
6. The variance is the minimum required to make reasonable use of the property, considering the site constraints, and the islands will substantially comply with minimum requirements.

The motion was supported by Commissioner Bailey and carried unanimously.

J. Bailey moved to deny the variance to allow up-lighting from the awnings of the Walgreens. There was no support for the motion, so it died.

#### **Variance #4**

Commissioner Udoji moved to approve the requested variance from Section 122-641 which requires that all lighting be down-directed, to allow up-directed, canopy-mounted lighting fixtures to illuminate the building and with the condition that the lights be turned off at closing time. The motion was supported by Commissioner Tillman with a vote of 4:1. Commissioner Bailey voted against the motion.

## **VI. ADJOURNMENT**

Since there was no further business, Commissioner Udoji moved to adjourn the meeting (Support: J. Bailey) and the motion carried unanimously. The meeting adjourned at 8:25 p.m.